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IN THE

Supreme Court of the United States

OCTOBER TERM 1971

No. 71-841

INDIANA HARBOR BELT RAILROAD COMPANY, *et al.*,
Petitioners,

—v.—

PUBLIC SERVICE COMMISSION OF INDIANA, *et al.*,
Respondents.

RESPONDENT PUBLIC SERVICE COMMISSION OF INDIANA'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF INDIANA

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STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

The only issue presented for review in this case is whether the Appellate Court of Indiana, upon judicial review of a decision of the Public Service Commission of Indiana, determined the issue necessary for an adjudication of the controversy before it.

STATEMENT OF THE CASE

This is a petition by the Indiana Harbor Belt Railroad Company for a writ of certiorari to the Appellate Court of Indiana which Court rendered a decision cited as *Indiana Harbor Belt Railroad Company v. Public Service Commission of Indiana,* Ind. App., 263 N.E.2d 292 (1970). This case was an appeal from a decision of the Public Service Commission of Indiana which found that the appellant, Indiana Harbor Belt Railroad Company, had more than twenty-five miles of mainline track for purposes of the Indiana Full Crew Law and ordered compliance therewith. The Appellate Court of Indiana, in a well reasoned opinion, upheld the order and decision of the Public Service Commission of Indiana. Following the determination by the Appellate Court of Indiana the Railroad's petition for rehearing before the Appellate Court was denied as was its petition for transfer to the Supreme Court of Indiana. Its petition for a rehearing with respect to the denial of transfer was also denied by the Supreme Court of Indiana.

ARGUMENT

The focus of the Railroad's statement of the issues presented before this Court is that the Appellate Court of Indiana, in resolving a dispute before it, did not formulate the issues as the Railroad thought that the issues should be formulated. A plain reading of the opinion shows that the Court performed its oblitation. The basis of the decision of the Appellate Court of Indiana substantially is as follows:

1. The Legislature of Indiana intended that the Indiana Full Crew Law be a safety measure.

2. The Indiana Full Crew Law, as a safety statute, must be given a liberal construction and must be read and con-

strued as a whole in order to effectuate its purpose as a safety measure.

3. The Indiana Full Crew Law manifests a specific legislative intent that it apply to switching operations.

4. Much credit must be given by the Court to the factual expertise of the Public Service Commission of Indiana in regard to the railroad operations in question.

5. It was quite proper for the Commission to find, in effect, that what is main track by statutory definition is also mainline track when viewed in the context of the specialized operations of the Railroad.

6. It was quite proper for the Commission to measure distances between terminals in finding the mainline trackage of the Railroad.

7. Tracks which are leased or subject to trackage agreements can qualify as mainline track for purposes of the application of the Indiana Full Crew Law.

8. Since a statute is prima facie operative only as to persons and things within the territorial jurisdiction of the lawmaking power which enacted it, it was proper for the Commission to exclude out-of-state track mileage in determining whether the railroad must comply with the Indiana Full Crew Law.

There was no dispute as to material facts. The Railroad at pages 8 through 14 of its Petition for Certiorari cites many authorities to support the proposition that it was entitled to a judicial review of the decision of the Public Service Commission of Indiana. This is not disputed. However, we submit that a proper judicial review was undertaken by the Appellate Court of Indiana in rendering the decision in question. There is no doubt that the Appellate Court of Indiana recognized and properly disposed of all

issues before it necessary for a proper judicial review and did so in a well reasoned opinion. It was not necessary for the Court to do more. *Ashwander v. Tennessee Valley Authority*, 297 U.S. 288 (1936).

It must also be added that this Court knows from its own experience that when it renders an opinion the framing of the issues presented for review may not be the same as the formulation of the issues presented in the briefs of the parties before it. This Court also knows that there are times when the issues which the parties attempt to present to it may be totally ignored. The main thrust of the Railroad's contentions are that the Appellate Court of Indiana did not discuss the legal issues as such issues were formulated by the Railroad when presented to the Appellate Court of Indiana.

The Railroad also interjects in its petition matters concerning its financial condition with respect to the Full Crew Law. This matter is no more before this Court then are the number of unsuccessful attempts to repeal the law since its enactment.

The Railroad in its petition has tried to frame a constitutional issue allegedly based upon the Appellate Court of Indiana's formulation of issues before it being different from the formulation of the issues as presented by the Railroad. As to the practice of raising unsound constitutional claims, a realistic approach precludes this practice, *Davenport v. Berman*, 420 F.2d 294 (2d Cir., 1969).

The Railroad in its Petition for Certiorari did not set out in its "Reasons for Granting the Writ" any specific question of law which the Indiana Appellate Court did not determine.

CONCLUSION

For the foregoing reasons the Railroad's Petition for a Writ of Certiorari should be denied.

Respectfully submitted,
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